



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 7130-98

12 November 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 10 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 4 January 1982 for four years at the age of 19. The record reflects that you were advanced to PFC and served without incident until 13 February 1983 when you received nonjudicial punishment for use of marijuana.

On 22 June 1983, you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for conspiracy to commit larceny; stealing a 35m camera with a 50m lens, a pair of stereo headphones, and a pair of "cammy" trousers, the total value of which was about \$286.85, the property of another Marine. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. A staff judge advocate reviewed the request and found it to be sufficient in law and fact. On 22 July 1983, the discharge authority directed

discharge under other than honorable conditions. You were so discharged on 5 August 1983.

In its review of your application, the Board carefully weighed all potentially mitigating factors such as your youth and immaturity and the fact that it has been more than 16 years since you were discharged. The Board noted your contention that you need veterans benefits so you can buy a house. The Board concluded that these factors were insufficient to warrant recharacterization of your discharge given your record of an NJP for use of marijuana and the fact that you accepted discharge rather than face trial by court-martial for serious theft offenses. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. Given all the circumstances of your case the Board concluded your discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

You are advised that personal appearance hearings are rarely granted by the board and only when, in executive session, it determines it cannot resolve an issue without the individual's presence, or the individual's appearance would serve some useful purpose. Your presence was not required for the Board to make a decision.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director